



March 30, 2001

ENGROSSED SENATE BILL No. 248

DIGEST OF SB 248 (Updated March 29, 2001 11:12 AM - DI 105)

Citations Affected: IC 35-38; noncode.

Synopsis: Crime in the presence of a child. Requires a court to consider whether an offender committed the offender's crime in the presence of or within the hearing of a person less than eighteen (18) years of age. Makes commission of a crime in the presence of or within the hearing of a person less than eighteen (18) years of age an aggravating factor that may be used to extend the sentence of an offender or impose consecutive sentences.

Effective: July 1, 2001.

**Clark, Wyss, Young R Michael,
Howard, Zakas, Craycraft**

(HOUSE SPONSORS — STURTZ, FOLEY)

January 9, 2001, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

February 1, 2001, amended, reported favorably — Do Pass.

February 19, 2001, read second time, ordered engrossed. Engrossed.

February 20, 2001, read third time, passed. Yeas 37, nays 10.

HOUSE ACTION

February 26, 2001, read first time and referred to Committee on Courts and Criminal Code.

March 29, 2001, amended, reported — Do Pass.

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March 30, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

ENGROSSED SENATE BILL No. 248

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-38-1-7.1, AS AMENDED BY P.L.183-1999,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2001]: Sec. 7.1. (a) In determining what sentence to impose
4 for a crime, the court shall consider:
5 (1) the risk that the person will commit another crime;
6 (2) the nature and circumstances of the crime committed;
7 (3) the person's:
8 (A) prior criminal record;
9 (B) character; and
10 (C) condition;
11 (4) whether the victim of the crime was less than twelve (12)
12 years of age or at least sixty-five (65) years of age;
13 **(5) whether the person committed the offense in the presence**
14 **or within hearing of a person who is less than eighteen (18)**
15 **years of age who was not the victim of the offense;**
16 ~~(5)~~ **(6)** whether the person violated a protective order issued
17 against the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5

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before its repeal) or IC 34-26-2 (or IC 34-4-5.1 before its repeal);
and

~~(6)~~ (7) any oral or written statement made by a victim of the
crime.

(b) The court may consider the following factors as aggravating
circumstances or as favoring imposing consecutive terms of
imprisonment:

(1) The person has recently violated the conditions of any
probation, parole, or pardon granted to the person.

(2) The person has a history of criminal or delinquent activity.

(3) The person is in need of correctional or rehabilitative
treatment that can best be provided by commitment of the person
to a penal facility.

(4) Imposition of a reduced sentence or suspension of the
sentence and imposition of probation would depreciate the
seriousness of the crime.

(5) The victim of the crime was less than twelve (12) years of age
or at least sixty-five (65) years of age.

(6) The victim of the crime was mentally or physically infirm.

(7) The person committed a forcible felony while wearing a
garment designed to resist the penetration of a bullet.

(8) The person committed a sex crime listed in subsection (e) and:

(A) the crime created an epidemiologically demonstrated risk
of transmission of the human immunodeficiency virus (HIV)
and involved the sex organ of one (1) person and the mouth,
anus, or sex organ of another person;

(B) the person had knowledge that the person was a carrier of
HIV; and

(C) the person had received risk counseling as described in
subsection (g).

(9) The person committed an offense related to controlled
substances listed in subsection (f) if:

(A) the offense involved:

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other
paraphernalia that creates an epidemiologically demonstrated
risk of transmission of HIV by involving percutaneous contact;

(B) the person had knowledge that the person was a carrier of
the human immunodeficiency virus (HIV); and

(C) the person had received risk counseling as described in
subsection (g).



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(10) The person committed the offense in an area of a consolidated or second class city that is designated as a public safety improvement area by the Indiana criminal justice institute under IC 36-8-19.5.

(11) The injury to or death of the victim of the crime was the result of shaken baby syndrome (as defined in IC 16-41-40-2).

(12) Before the commission of the crime, the person administered to the victim of the crime, without the victim's knowledge, a sedating drug or a drug that had a hypnotic effect on the victim, or the person had knowledge that such a drug had been administered to the victim without the victim's knowledge.

(13) The person:

(A) committed trafficking with an inmate under IC 35-44-3-9; and

(B) is an employee of the penal facility.

(14) The person committed the offense in the presence or within hearing of a person who is less than eighteen (18) years of age who was not the victim of the offense.

(c) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:

(1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.

(2) The crime was the result of circumstances unlikely to recur.

(3) The victim of the crime induced or facilitated the offense.

(4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or

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sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(d) The criteria listed in subsections (b) and (c) do not limit the matters that the court may consider in determining the sentence.

(e) For the purposes of this article, the following crimes are considered sex crimes:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Child molesting (IC 35-42-4-3).
- (4) Child seduction (IC 35-42-4-7).
- (5) Prostitution (IC 35-45-4-2).
- (6) Patronizing a prostitute (IC 35-45-4-3).
- (7) Incest (IC 35-46-1-3).
- (8) Sexual misconduct with a minor under IC 35-42-4-9(a).

(f) For the purposes of this article, the following crimes are considered offenses related to controlled substances:

- (1) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- (2) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (4) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (5) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
- (6) Possession of a controlled substance (IC 35-48-4-7).
- (7) Dealing in paraphernalia (IC 35-48-4-8.5).
- (8) Possession of paraphernalia (IC 35-48-4-8.3).
- (9) Offenses relating to registration (IC 35-48-4-14).

(g) For the purposes of this section, a person received risk counseling if the person had been:

- (1) notified in person or in writing that tests have confirmed the presence of antibodies to the human immunodeficiency virus (HIV) in the person's blood; and
- (2) warned of the behavior that can transmit HIV.

SECTION 2. [EFFECTIVE JULY 1, 2001] IC 35-38-1-7.1, as amended by this act, applies to all offenses committed after June 30, 2001.



SENATE MOTION

Mr. President: I move that Senator Wyss be added as second author and Senators Young R Michael and Howard be added as coauthors of Senate Bill 248.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred Senate Bill No. 248, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 248 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 10, Nays 0.

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SENATE MOTION

Mr. President: I move that Senator Zakas be added as coauthor of Senate Bill 248.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 248, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 14, delete "of an unemancipated child" and insert "**or within hearing of a person who is**".

Page 1, line 15, after "age" insert "**who was not the victim of the offense**".

Page 3, line 16, delete "of an" and insert "**or within hearing of a person who is**".

Page 3, line 17, delete "unemancipated child".

Page 3, line 17, after "age" insert "**who was not the victim of the offense**".

Page 4, line 35, delete "for which the offender" and insert "**committed**".

Page 4, line 36, delete "is initially convicted".

and when so amended that said bill do pass.

(Reference is to SB 248 as printed February 2, 2001.)

DVORAK, Chair

Committee Vote: yeas 11, nays 0.

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